

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOHN FIRESTONE, STEVEN R. MILLER,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

v.

CIV No. 97-1416 JP/LCS

**LOU GALLEGOS, Acting Secretary of the
New Mexico Human Services Department,
and the NEW MEXICO HUMAN SERVICES
DEPARTMENT,**

Defendants.


MEMORANDUM OPINION AND ORDER

The subject of this Memorandum Opinion and Order is Plaintiffs' "Motion for Approval of Stipulated Dismissal" (Doc. No. 15), filed May 5, 1998.

On February 9, 1998, the parties filed a Rule 41 Stipulated Dismissal (Doc. No.12). Under FED. R. CIV. PRO. 41, once a stipulated dismissal is filed, court approval of that dismissal is generally not required. Plaintiff argues that this case falls under an exception to Rule 41 because it is a class action, and, therefore, court approval of the parties' dismissal is necessary under Rule 23(e). I conclude that Rule 23(e) is not implicated because this case was never certified as a class action. *See, e.g., Everheart v. Bowen*, 853 F.2d 1532, 1539 (10th Cir. 1988) (stating that "[a]bsent a class certification the district court should not have treated the suit as a class action by granting statewide injunctive relief") (citations omitted), *rev'd on other grounds*, 494 U.S. 83 (1990); *Sosna v. Iowa*, 419 U.S. 393, 399 n.8 (1975) (explaining that "[o]nce the suit is certified

as a class action, it may not be settled or dismissed without the approval of the Court”) (emphasis added).

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Approval of Stipulated Dismissal (Doc. No. 15) is DENIED.


UNITED STATES DISTRICT JUDGE